

REMARKS/ARGUMENTS

The Examiner is requiring an election of a single species of *Bacillus subtilis* gene from those listed in claim 1. Applicants provisionally elect, with traverse, the following species, for examination purposes only, (1) "rocR" as the single species of *Bacillus subtilis* gene (claims 1-7 readable thereon).

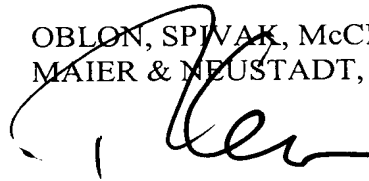
Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP § 808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only. Applicants respectfully request that the election requirement be withdrawn.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.



Richard L. Treanor
Registration No. 36,379

Customer Number

22850

Tel. (703) 413-3000
Fax. (703) 413-2220
(OSMMN 07/09)